poration, entered into two agreements with Anitra Company of Hongkong to build 40 dumb barges and 20 self-propelled barges. Anitra, under the contracts, sub-contracted in identical terms to the interveners who in turn, under their contracts, further sub-contracted the building of the barges to the second defendants. There is a photostat copy of the contract between the interveners and the second defendants exhibited to the affidavit filed on behalf of the interveners. My attention has been drawn to the schedule to that contract, in particular Article XVIII which refers to "Liens and Titles". Having regard to the conclusion I have come to, I do not propose to deal with submission relating to that article, though it may well be the answer in this case.

The completion date of the contract between the interveners and the second defendants was 30th of May 1977. Progress payments had been made and 38 of the 60 barges had been delivered in early 1977. As regards the remaining 22 barges, the interveners claim having paid 95.8% of the purchase price. There is also a provision in the contract for penalty for late delivery. These matters are hotly disputed by the second defendants and there are a number of admiralty actions pending in the courts, one of which is before me, admiralty action in Suit No. 182 of 1978. In those admiralty actions, the plaintiffs, the present interveners, in April 1978, arrested the 22 barges, those that were yet to be delivered by the defendants, the present second defendants.

There have also been taken out interlocutory applications in those admiralty actions. The position today is that the interveners, the plaintiffs in those actions, have an order of court against the defendants, the second defendants in this action, that the remaining 22 barges be released to the plaintiffs on the term that they provide a bank guarantee for $2 million to protect the possessory lien of the defendants in respect of the barges for unpaid purchase monies.

One extraordinary matter in this case is that in those admiralty actions where the interveners are plaintiffs, and the present second defendants are the defendants, the latter had not at any time contended in those actions they had in fact sold the barges to the present plaintiffs. This fact perhaps explains why the second defendants are not in court for the hearing of this motion. Another extraordinary matter is that the plaintiffs in this action had not availed themselves of the procedure provided in Order 70 to intervene in those admiralty actions to assert their claim, a course of conduct which they could have most conveniently taken.

Mr. Arul for the interveners submits that the position of an intervener in an admiralty action is the same as that of a defendant to the action, and in support of this proposition, he relies on the well-known case of *The Lord Strathcona*.[1] But he has not been able to satisfy me that there is any reported case of an intervener having applied to a court and obtained an order to set aside a writ of summons. It seems to me that Order 70 rule 12 which deals with the release of property under arrest implicitly provides that so far as an intervener is concerned, the best he can have is to apply to the court for the release of the vessel. Nothing in the Rules of Court provides for an intervener to set aside the writ of summons itself. As I have said, the interveners obtained leave to enter appearance to move this court to set aside the arrest. I am therefore not going to deal with the lengthy submission of Mr. Mohan Singh for the plaintiffs on matters relating to procedures, in particular relating to setting aside a writ of summons.

I now turn to the application for the discharge of the warrant of arrest. I have said that there is an order of court in force that the 22 barges, one of which is "SAN 003" be released to the interveners on their providing a bank guarantee. I am told from the Bar that the said guarantee was filed on 26th of December. Therefore, it seems to me, that the arrest of the vessel by the plaintiffs, having regard to my earlier observations, is an abuse of the process of the court.

This is brought home when I consider the affidavits that have been filed for this motion. To put shortly, the director of the second defendants and the director of the plaintiffs who has filed affidavits on behalf of the plaintiffs, are related. The former is the father and the latter the daughter. In fact until recently, as recent as October 1978, the father had also been a director of the plaintiffs. I am also told from the Bar that it was the father who had filed affidavits in the other admiralty actions for those defendants. It is in these circumstances that I suspect the facts deposed to in the affidavit filed on behalf of the plaintiffs.

Finally, without going into details, it is clear to me, at the end of the day, whatever be the result of this action, the arrest of the vessel "SAN 003" by the plaintiffs is an abuse of the process of the court. I therefore order that the warrant of arrest against the vessel "SAN 003" be discharged, but that the writ of summons against the second defendants be proceeded with. In the circumstances of this case, there will be no order on prayer three. Costs to interveners.

Order accordingly.

Solicitors: *B. Mohan Singh & Co.; Karthigesu & Arul.*

I.A.C. (SINGAPORE) PTE. LTD. v. KOH MENG WAN

[O.C.J. (Sinnathuray J.) February 9, 1979]
[Singapore — Suit No. 1242 of 1977]

Partnership — Guarantee — Agreement by partner to answer for debts of partnership — Whether it amounted to a guarantee — Whether a partner could guarantee on behalf of the partnership.

The facts of the case are briefly as follows. AAC was a partnership. The defendant became a partner on February 26, 1970 and on June 30, 1975 the defendant ceased to be a partner. Thereafter, Ang was the sole proprietor of AAC. On April 9, 1975 the defendant and Ang executed a document in favour of the plaintiffs in which the former jointly and severally agreed to be answerable and responsible for the payment of airconditioners supplied to AAC by the plaintiffs not exceeding $100,000. On June 1, 1976 the plaintiffs obtained a judgment in the High Court against AAC for $108,398.99 for goods sold and delivered. Then not having obtained satis-

faction, the plaintiffs commenced the present proceedings. The present claim was for $100,000. The defendant pleaded that "the alleged Letter of Guarantee dated April 9, 1975 was bad in law."

One of the issues posed before the court was whether a person could guarantee the payment of his own debt.

Held, dismissing the plaintiffs' claim: (1) the defendant and Ang had in the alleged contract of April 9, 1975 contracted jointly and severally to guarantee the debt incurred by them trading in partnership which they were not competent to do;

(2) the alleged contract of April 9, 1975 was not a guarantee. The plaintiffs had no cause of action accruing to them from it.

Cases referred to:-

(1) *Tan Boon Cheo* v. *Ho Hong Bank Ltd.* [1934] M.L.J. 180.

(2) *Re Chop Yew Seong* [1958] M.L.J. 239.

(3) *Bank of New South Wales* v. *Permanent Trustee Company of New South Wales Ltd.* 68 C.L.R. 1.

(4) *Sterling* v. *Swadron* [1968] 2 Q.B. 76.

(5) *Murray* v. *Somerville* (1809) 2 Camp. 98, E.R. 1094.

CIVIL SUIT.

C.H. Hoo for the plaintiffs.

Quek Peck Hong (Miss) for the defendants.

Cur. Adv. Vult.

Sinnathuray J.: The Order of Court of 11th of September 1978 directed that the whole of the action be disposed of by the trial of the point of law as to whether on the true construction of the contract dated 9th day of April, 1975 and made between the plaintiffs of the one part and the defendant and one Ang Lak Nya of the other part, the defendant is liable to the plaintiffs for goods sold and delivered to the firm of Asia Air-Conditioning Company (AAC).

The sole issue is whether the alleged contract is in law a guarantee, a collateral agreement between the defendant and the plaintiffs to answer for the debt or default of AAC.

The agreed facts are these. AAC was a partnership. The defendant became a partner on 26th of February 1970, and, Ang Lak Nya, a partner on 6th of March 1974. On 30th of June 1975 the defendant ceased to be a partner, and thereafter Ang Lak Nya was the sole proprietor of AAC.

On 9th of April 1975 the defendant and Ang Lak Nya executed a document in favour of the plaintiffs. the relevant portions of which are as follows:

"Messrs I.A.C. (SINGAPORE) PRIVATE LIMITED
No. 24 Leng Kee Road,
Singapore 3.

In consideration of I.A.C. (Singapore) Private Limited ... having at our request agreed to supply from time to time air-conditioners, ... in credit to Messrs Asia Air-Conditioning Company. ... We, the undersigned, Koh Meng Wan and Ang Lak Nya ... Agree jointly and severally. ...

1. To be answerable and responsible ... for the due payment ... but so that our liability under this guarantee shall not jointly or severally exceed in the aggregate sum of Dollars One Hundred Thousand Only.

xxx xxx

Signed Sealed and Delivered
Asia Air-Conditioning Co.
Koh Meng Wan/Ang Lak Nya"

Between 29th of April 1975 and 9th of January 1976 the plaintiffs supplied and delivered goods to AAC under a running account. The balance outstanding on 3rd of April 1976 was $108,398.99. AAC having failed to make payment, on 1st of June 1976, the plaintiffs obtained a judgment in the High Court against it. Then, not having obtained satisfaction, the plaintiffs commenced the present proceedings against the defendant.

The claim is for the sum of $100,000. In the defence, the defendant pleaded that "the alleged Letter of Guarantee dated 9th April 1975 is bad in law". Counsel for the defendant accordingly opened the case.

One of the submissions for the defendant was, as partners are jointly liable for the debts of the partnership, the defendant, as a partner of AAC, cannot be made severally liable for the debt incurred by AAC. The plaintiffs having obtained judgment against AAC, it was contended that they were precluded from bringing this action against the defendant. I reject the submission. In my view, if the document of 9th of April 1975 created legal relations between the defendant and the plaintiffs, the plaintiffs have a cause of action separate and distinct from that arising between the plaintiffs and AAC.

Another submission for the defendant which I reject was as the defendant ceased to be a partner on 30th of June 1975, he cannot be held liable for the debts of AAC incurred thereafter. The short answer is that it is settled law that when an active partner (the defendant) ceases to be a partner, express notice of it must be given to the persons (the plaintiffs) who have had dealings with the firm. (See: *Tan Boon Cheo* v. *Ho Hong Bank Ltd.*[1] and *Re Chop Yew Seong*[2]). In this case, it is not the agreed facts that notice was given to the plaintiffs that the defendant had ceased to be a partner of AAC.

The principal submission for the defendant was a persuasive one. A guarantee is defined as "a collateral engagement to answer for the debt, default or miscarriage of another person" (see: *Stroud's* Judicial Dictionary, 4th Edn., Vol. 2, p. 1198). It was submitted that the alleged contract of 9th of April 1975 is not a guarantee as the essence of a guarantee, to answer for the debt or default of another person, is not to be found in it. The defendant, as a partner of AAC, was a debtor of the plaintiffs. It was contended therefore that he was not a competent person to be a guarantor. The question was posed: Can a person guarantee the payment of his own debt? To answer it, Miss Quek for the defendant referred me to the case of *Bank of New South Wales* v. *Permanent Trustee Company of New South Wales Limited.*[3] Latham C.J. at page 11 said:

"A person cannot guarantee the payment of money by himself. He may undertake an additional obligation to pay money which he is already bound to pay, but that added obligation cannot be described as a guarantee. A guarantee is essentially a promise to answer for the debt, default or miscarriage of another, and it does not include as such the case of a person incurring an additional liability in respect of a sum of money for which he is already liable."

Counsel for the plaintiffs sought to dismiss the passage I have cited as an *obiter* of Latham C.J. It is correct that in that case the learned Chief Justice was construing certain statutory provisions of the Mora-

torium Acts of New South Wales, but the principle he enunciated cannot be doubted for it is commonsense. It has been applied in Canada in *Sterling* v. *Swadron*,[4] cited by counsel for the defendant, and, referred to with approval in *Strouds* Judicial Dictionary under "Guarantee".

Next, it was submitted for the plaintiffs that the alleged contract was drawn by commercial men, without the benefit of legal advice, wherein the defendant has held himself personally liable as against being jointly liable, and therefore I must give effect to it, regardless of what one may call the document. Now, I am not sure what I am to make of this submission. But, let me say, the alleged contract is not a mercantile document, I have to construe to find the intention of the parties. It is a document in legal language. What is wrong with it is that the person who made the document has committed a legal folly of requiring the partners of AAC to give a guarantee to the plaintiffs which invalidates the document.

Finally, as I have understood it, there was an alternative to the above submission. It was that since partnership creates a joint liability, the defendant by making himself answerable for the debts of his co-partners was giving a guarantee for the debt of another person. To support the said submission, counsel referred me to *Halsbury's* Laws of England, 3rd Ed., Vol. 28. At page 511, there is the following in paragraph 987:

"If one partner promises in his own name to pay a debt of his firm he alone is liable on such promise, and he cannot raise the defence that the debt was a joint liability."

The authority for the above proposition is *Murray* v. *Somerville*,[5] a decision before the Partnership Act of 1890. In that case the defendant, in an action for money had and received, had raised the plea of abatement that it was due jointly from himself and his co-partners. Several letters from the defendant to the plaintiff were put in, which were signed by the defendant, and in which he promised to pay the money without making any mention of his partners. Lord Ellenborough held the letters conclusive evidence that the debt was due from the defendant personally, and not from the partnership.

Now, firstly, the facts of the present case differ widely from that of *Murray* v. *Somerville*. Secondly, in my view there is nothing in the statement in *Halsbury* that can support the submission made for the plaintiffs. In the case before me, the defendant and Ang Lak Nya have in the alleged contract of 9th of April 1975 contracted jointly and severally to guarantee the debt incurred by them trading in partnership as AAC which they are not competent to do. Further, in the testimonium, unlike the facts in *Murray* v. *Somerville*, the defendant has appended his signature under his firm's name, AAC. In my judgment the liability of the defendant (and of Ang Lak Nya) to the plaintiffs would be the same even if he had not executed that document.

I therefore declare that the alleged contract of 9th of April 1975 is not a guarantee, and the plaintiffs have no cause of action accruing to them from it. The plaintiffs' claim is accordingly dismissed.

Claim dismissed.

Solicitors: *Advani & Hoo; Lim & Gopalan.*

MALAYSIAN REPORTS

CHONG KOK LIM & ORS. v. YONG SU HIAN

[F.C. (Chang Min Tat, Syed Othman F.JJ. & Abdoolcader J.) October 24, 25 & 26, 1978]

[Ipoh — Federal Court Civil Appeal No. 80 of 1978]

Administrative Law — Domestic tribunal — Association — Expulsion of member by Executive Committee — Whether rules of association give power to expel — Whether adequate notice, hearing and due inquiry given — Confirmation of decision of Executive Committee by Extraordinary General Meeting — Mala fides and bias — Error of law — Defective constitution of tribunal — Damages — Exemplary damages.

Societies — Expulsion of member by Executive Committee — No adequate notice and hearing — Confirmation by Extraordinary General Meeting.

In this case the respondent had been expelled from membership of the Perak Chinese Association by a resolution of the Executive Committee which was later confirmed by an Extraordinary General Meeting on the basis of an allegation that he had used the name of the Association without authority to privately print forms of application for membership of the association. The respondent applied to the High Court to set aside his expulsion on the grounds that the resolution in question and the confirmation thereof were *ultra vires*, in breach of the rules of natural justice and made in bad faith and also claimed damages for wrongful expulsion. The learned judge declared the resolution of the Executive Committee affecting his expulsion and the confirmation thereof by the Extraordinary General Meeting void and of no effect but made no order for damages. The appellant appealed against the declaration made and the respondent cross-appealed on the question of damages.

Held: (1) the rules of the association empowered the Executive Committee to expel a member but only in accordance with the rules;

(2) in this case no adequate notice and hearing had been given and there was no due inquiry at the meeting of the Executive Committee in respect of the allegation against the respondent. In the circumstances the decision of the Executive Committee to expel the respondent could not be valid;

(3) as the decision to expel the respondent arrived by the Executive Committee was invalid, there could be no question of the Extraordinary General Meeting being able to confirm an invalid decision and in any case nothing transpired at the Extraordinary General Meeting to rectify the position or cure the initial defects in the decision of the Executive Committee;

(4) there was not only reasonable suspicion but also real likelihood of bias on the part of the first appellant in this case and his presiding at the Executive Committee meeting and at the Extraordinary General Meeting in relation to the matter of the respondent's expulsion was yet another factor vitiating the proceedings;

(5) the appellate court would not interfere with the learned judge's decision not to award damages as although his expulsion was invalid, the respondent had not suffered such damage as to merit a reversal of that decision.

Principles upon which courts will intervene in decisions of domestic tribunals in relation to the power of expulsion of a member stated.

Cases referred to:-

(1) *Weinberger* v. *Inglis* [1919] A.C. 606, 626.

(2) *Young* v. *Ladies' Imperial Club Limited* [1920] 2 K.B. 523.

(3) *Hopkinson* v. *Marquis of Exeter* (1867-8) L.R. 5 Eq. C.

(4) *Hasnul bin Abdul Hadi* v. *Bulat bin Mohamed & Anor.* [1978] 1 M.L.J. 75.

(5) *Dawkins* v. *Antrobus* (1881) 17 Ch. D. 615.

(6) *MacLean* v. *The Workers Union* [1929] 1 Ch. 602.

(7) *Lee* v. *The Showmen's Guild of Great Britain* [1952] 2 K.B. 329, 341-347.

(8) *Andrews* v. *Mitchell* [1905] A.C. 78.

(9) *Abbott* v. *Sullivan* [1952] 1 K.B. 189.

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